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MICHAEL J. GARCIA
United States Attorney
Southern District of New York
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New York, New York 10007
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	<u>CONSENT DECREE</u>
	:	
- against -	:	06 Civ. 2021 (SAS)
	:	
KAUFMAN REALTY CORPORATION and	:	ECF CASE
460 WEST 34th STREET ASSOCIATES,	:	
	:	
Defendants.	:	
	:	
- - - - -	:	x

WHEREAS, Plaintiff United States of America (the "Government") commenced this action to enforce Title III of the Americans with Disabilities Act of 1990 ("ADA") against defendants Kaufman Realty Corporation and 460 West 34th Street Associates (collectively, "Defendants"); and

WHEREAS, Defendants own and operate a commercial office building located at 460 West 34th Street, New York, New York; and

WHEREAS, in August 2005, Sinergia, Inc. ("Sinergia"), a New York City non-profit social service organization that provides services to adults with mental retardation and developmental disabilities and their families, filed a complaint with the United States Department of Justice alleging that Defendants engaged in

unlawful discrimination when they refused to lease available space at 460 West 34th Street to Sinergia; and

WHEREAS, following an investigation of Sinergia's complaint in accordance with 42 U.S.C. § 12188(b)(1)(A)(i), the Government concluded that Sinergia and its consumers had been discriminated against and that such discrimination raised an issue of general public importance, 42 U.S.C. § 12188(b)(1)(B); and

WHEREAS, the Government commenced this action against Defendants and alleged in its complaint that Defendants violated Title III of the ADA, 42 U.S.C. §§ 12181-89, and the Department of Justice's implementing regulation, 28 C.F.R. Pt. 36, by, among other things, refusing to lease space at 460 West 34th Street to Sinergia because Sinergia provides services to adults with mental retardation and developmental disabilities; and

WHEREAS, under Title III of the ADA, "no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation," 42 U.S.C. § 12182(a); and

WHEREAS, under Title III of the ADA, it is "discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known

disability of an individual with whom the individual or entity is known to have a relationship," 42 U.S.C. § 12182(b)(1)(E); and

WHEREAS, Defendants deny the Government's allegations, and have consented to the entry of this Consent Decree without trial or adjudication of any issues of fact or law and without this Consent Decree constituting an admission by Defendants with respect to any such issues; and

WHEREAS, the United States and Defendants agree that settlement of these matters without further litigation is in the public interest and that the entry of this Consent Decree is the most appropriate means of resolving these matters;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 42 U.S.C. §§ 12188(b)(1)(B) and 42 U.S.C. §§ 1331 and 1345.

2. Venue for this action lies in this judicial district pursuant to 28 U.S.C. § 1391 because Defendants reside in this judicial district and the events and omissions giving rise to the Government's claims occurred in this judicial district.

APPLICATION AND PARTIES BOUND

3. Defendant Kaufman Realty Corporation is a New York corporation with an office located at 450 7th Avenue, New York, New

York. At all times relevant to this action, defendant Kaufman Realty Corporation managed the commercial office building located at 460 West 34th Street, New York, New York.

4. Defendant 460 West 34th Street Associates is a New York partnership with an office located at 450 7th Avenue, New York, New York. At all times relevant to this action, defendant 460 West 34th Street Associates owned the building located at 460 West 34th Street, New York, New York.

5. This Consent Decree applies to, and is binding upon, defendant Kaufman Realty Corporation, defendant 460 West 34th Street Associates, and each of their successors-in-interest and assigns. Defendants shall have a duty to notify any successors-in-interest and assigns of this Consent Decree. The undersigned representatives of Defendants certify that they are authorized by Defendants to enter into and consent to the terms and conditions of the Consent Decree and to execute and legally bind Defendants to it.

GENERAL INJUNCTIVE RELIEF

6. Defendants shall not discriminate against any individual or entity on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation.

7. Defendants shall not exclude or otherwise deny equal goods, services, facilities, privileges, advantages,

accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

8. Defendants shall not unlawfully discriminate against any person on the basis of disability with respect to the leasing of any commercial real property.

9. Defendants shall not refuse to lease commercial real property to any person or entity, or otherwise discriminate against any person or entity in connection with the leasing of any commercial real property, because that person or entity associates with or provides services to individuals with disabilities.

REPORTING AND RECORD-KEEPING OBLIGATIONS

10. Defendants shall keep and preserve records of any and all inquiries made by or on behalf of any entity serving individuals with disabilities concerning available space in any building owned, managed, and/or operated by either Defendant.

11. Defendants shall keep and preserve records of all written complaints or allegations, whether formal or informal, alleging that either Defendant, or any agent, employee, or representative of either Defendant, discriminated on the basis of disability in connection with the leasing of any commercial office space. Defendants shall promptly notify the Government if any person or entity brings any lawsuit or other legal or

administrative proceeding alleging discrimination on the basis of disability by either Defendant. Such notice shall be made in writing and provided to counsel for the Government within twenty days after receipt of such notice by either Defendant and shall include a copy of any such complaint.

RIGHT TO REVIEW COMPLIANCE

12. The Government shall have the right to review compliance with this Consent Decree, including through any means available to the general public. Defendants shall cooperate with any reasonable request by the Government to inspect and copy any documents that Defendants are obligated to preserve pursuant to this Consent Decree and any other documents that the Government may reasonably request to verify compliance with the terms of this Consent Decree.

MONETARY RELIEF

13. Defendants shall pay a total of one hundred seventy-five thousand dollars (\$175,000.00) in full and final settlement and satisfaction of any and all claims asserted by the United States in this action, pursuant to 42 U.S.C. § 12188(b)(2)(B), for monetary damages on behalf of any aggrieved persons, including, without limitation, Sinergia and the individuals with disabilities served by Sinergia. Payment of \$87,500 shall be made within ten days after the date of entry of the Consent Decree and payment of \$87,500 shall be made within ninety days after the date of entry of

the Consent Decree, with both payments to be made by check payable to "Sinergia, Inc.," and delivered to the United States Attorney's Office for the Southern District of York, 86 Chambers Street, 3rd Floor, New York, New York, 10007; provided, however, that no payment shall become due under this paragraph until Sinergia has executed, and counsel for Defendants has received, a release substantially in the form attached to this Consent Decree as Exhibit A.

VIOLATION OF THIS CONSENT DECREE

14. A violation of this Consent Decree shall be deemed a subsequent violation of the ADA under 42 U.S.C. § 12188(b)(3).

RESERVATION OF RIGHTS

15. Nothing contained in this Consent Decree is intended or shall be construed as a waiver by the Government of any right to institute any proceeding or action against Defendants for violations of any statutes, rules or regulations administered by the Government, or to prevent or limit the rights of the Government to obtain relief under the ADA, or any other federal statutes or regulations, or on account of any violation of this Consent Decree or any other provision of law; provided, however, that subject to Defendants' full compliance with the Consent Decree, the Government shall not file a subsequent complaint against Defendants pursuant to Title III of the ADA concerning the violations of the ADA alleged in the complaint based on facts in existence at the time of

the filing of the complaint in this action.

MODIFICATION

16. There shall be no modification of this Consent Decree without the written consent of the Government and the Defendants and the approval of the Court.

ENTIRE AGREEMENT

17. This Consent Decree represents the entire agreement between the Government and Defendants. No prior agreements, oral representations or statements shall be considered part of this Consent Decree.

RETENTION OF JURISDICTION

18. This Court shall retain jurisdiction of this action for a period of three years to enforce or modify the provisions of this Consent Decree, to resolve any dispute that arises under this Consent Decree, and to entertain any application and issue any orders as may be necessary or appropriate for the effectuation of its terms and objectives.

19. The parties shall discuss and attempt to negotiate a resolution of any dispute relating to the interpretation of this Consent Decree before bringing the matter to the Court's attention for resolution.

EXECUTION OF CONSENT DECREE

20. This Consent Decree may be executed in counterparts, each of which shall be an original and shall constitute one and the same instrument.

COSTS AND ATTORNEY'S FEES

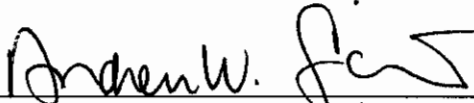
21. Each party shall bear its own costs and attorney's fees in this action.

THE PARTIES HEREBY CONSENT to entry of the foregoing Consent Decree:

FOR THE UNITED STATES:

MICHAEL J. GARCIA
United States Attorney for the
Southern District of New York
Attorney for Plaintiff
United States of America

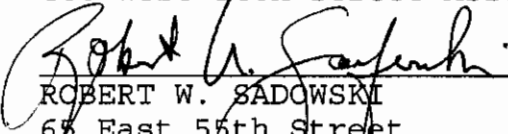
By:


ANDREW W. SCHILLING (AS-7872)
Assistant United States Attorney
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Telephone: (212) 637-2721
Facsimile: (212) 637-2730

FOR DEFENDANTS:

OLSHAN GRUNDMAN FROME ROSENZWEIG &
WOLOSKY LLP
Attorneys for Defendants
Kaufman Realty Corporation and
460 West 34th Street Associates

By:


ROBERT W. SADOWSKI
65 East 55th Street
New York, New York 10022
Telephone: (212) 451-2300
Facsimile: (212) 451-2222

JUDGMENT IS HEREBY ENTERED in accordance with the foregoing Consent Decree.

Dated: New York, New York
MAR 15, 2006

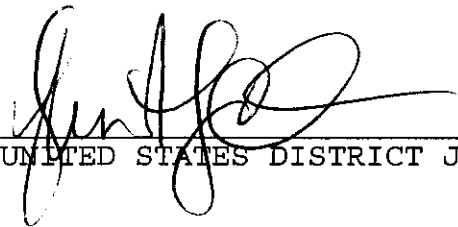

UNITED STATES DISTRICT JUDGE

EXHIBIT A

RELEASE

In consideration of the payment of one hundred and seventy-five thousand dollars (\$175,000.00) in accordance with the terms of the Consent Decree entered in United States v. Kaufman Realty Corp. at al., 06 Civ. ____ (____) (S.D.N.Y.), Sinergia, Inc. ("Sinergia"), by its authorized representative, hereby releases Kaufman Realty Corporation and 460 West 34th Street Associates together with their subsidiaries, affiliates, parents, successors, officers, assigns, partners, shareholders, agents, employees, attorneys, or representatives from any and all liability for any and all claims for relief or causes of action of any nature that Sinergia may have against Kaufman Realty Corporation and 460 West 34th Street Associates arising from the facts and circumstances alleged in the complaint dated _____, 2006, filed by the United States in that action.

The undersigned representative of Sinergia hereby certifies that he/she is authorized by Sinergia to enter into and consent to the terms of this release and to execute and legally bind the Sinergia to this release.

Dated _____, 2006

SINERGIA, INC.

BY: _____